IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 13479 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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THE STATE OF GUJARAT - Applicant(s)
Versus
PRITESH @ MUNNO VASUDEV BRAHMBHATT - Respondent(s)

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Appearance :
PUBLIC PROSECUTOR for Applicant(s) : 1,
MR ARPIT A KAPADIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/03/2007

ORAL JUDGMENT

1.0 By way of this application, the applicant-State has prayed to quash and set aside the judgment and order dated 25.08.2006 passed by the learned Additional Sessions Judge & Presiding Officer, Fast Track Court No. 7, Vadodara in Criminal Misc. Application No. 1106 of 2006 whereby, the respondent herein was ordered to be enlarged on bail.

2.0 The brief facts of the case are that on

03.05.2006 a complaint being I-C.R. No. 152 of 2006 came to be registered against the respondent with Panigate Police Station, Vadodara for the offence punishable u/s. 143, 147, 148, 149, 302, 327 and 34 of Indian Penal Code and Section 135 of the Bombay Police Act by one Mehmood Haji Abdulgani Vohra. Pursuant to investigation, the respondent came to be arrested. Thereafter, vide impugned judgment and order dated 25.08.2006, the respondent was ordered to be enlarged on regular bail. Being aggrieved by the said order, the applicant – State has approached this Court by way of this application.

3.0 Heard learned Counsel for the parties. The main ground on which the applicant – State has sought cancellation of bail granted to the accused is that the Court below has committed an error in not considering the fact that the accused was present at the place where the alleged incident took place. It was further argued on behalf of the applicant-State that the Court below have also not taken into

consideration statement of eye-witnesses.

3.1 On perusal of the documents placed on record it appears that the Court below while releasing the respondent on bail has not believed the story put forward by the complainant since the respondent was not the only person who was present at the alleged place of incident. The respondent was present at the said place along with a crowd of around thousand people. It appears that the name of the respondent has been involved in the alleged offence since the respondent and the complainant were studying together in their school days. Apart from that there is neither any evidence on record nor any deposition of any eye-witness on the basis of which it could be specifically stated that the respondent was involved in the alleged offence. It may be noted that no weapons or arms have been recovered from the respondent. Apart from that the impugned complaint was filed after delay of about one day after the alleged incident took place, which creates considerable doubt behind

the intention and motive for filing of the same.

3.2 Even otherwise, the existence of very cogent and overwhelming circumstances are necessary for passing an order for cancellation of bail. In that view of the matter here it would be relevant to refer to a decision of this Court in the case of ***"State of Gujarat v. Lalji Popat & ors."*** reported in 1988 (2) G.L.R. 1073, wherein the Court has laid down certain criteria that are required to be taken into consideration while deciding a bail application which reads as under;

> "(i) The nature of the charge is the vital factor and the nature of evidence is also pertinent.
>
> (ii) The punishment to which the accused may be liable if convicted.
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> (iii) While considering the question of granting bail u/s. 439(1) of the Code, the Court should take into consideration the provisions of Section 437(1) in spite of the fact that u/s. 439(1) the High Court and Sessions Curt have wide jurisdiction to grant bail.
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> (iv) The nature and gravity of the circumstances in which the offence is committed, say highway robbery or dacoity, gang rape, murder or murder's because of

group rivalry, attack by one community on other community or such other cases.

(v) The position and the status of the accused with reference to the victim and the witnesses say in case of burning of house wife, witnesses may be neighbors, their evidence might be tampered with by any means.

(vi) The reasonable possibility of the presence of the accused not being secured at the trial.

(vii) Any likelihood of tampering with the witnesses.

(viii) Jeopardizing his own life being faced with the grim prospect of possible conviction in the case.

(ix) The prospect of victim or his relatives indulging in private retribution who feel helpless and may believe that law may not protect them.

(x) The larger interests of public, society or the State.

(xi) Similar other circumstances depending on the facts and peculiarity of each case."

3.3 While interfering with a discretionary order granting bail to an accused person, the Court has to keep in mind the factors referred to herein above. It is true that one of the paramount considerations for the Court at the time of granting bail would be as to whether the

accused would be readily available for their trial and whether they are likely to abuse the discretion granted in their favour by tampering with the evidence. But, at the same time, the Court has also to consider the other relevant aspects in the matter before granting bail. The Court is required to exercise the discretion of granting bail judicially after following the well laid down principles. If the Sessions Court has ignored the said criteria of deciding bail application, either intentionally or arbitrarily, then this Court has jurisdiction to set aside the said order.

3.4 In the case on hand, the Sessions Court has into consideration each and every aspect of the matter while granting bail to the respondent. Therefore, it cannot be said that the Sessions Court has erroneously or arbitrarily, without considering the relevant factors, granted bail to respondent. Hence, I am of the view that no infirmity or illegality has been committed by the Court below warranting interference from this

Court in this application. Hence, the application deserves to be dismissed.

4.0 In the result, the application stands dismissed. The impugned judgment and order dated 25.08.2006 passed by the learned Addl. Sessions Judge & Presiding Officer, Fast Track Court No. 7, Vadodara in Misc. Criminal Application No. 1106 of 2006 is confirmed. Rule is discharged.

(K. S. JHAVERI, J.)

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